

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Michael Schlegel,

Civil No. 16-867 (DWF/BRT)

Plaintiff,

v.

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

Sherburne County Sheriff and  
United States Marshal,

Respondent.

This matter is before the Court upon the Objection (Doc. No. 30) to Magistrate Judge Becky R. Thorson's July 25, 2016 Report and Recommendation (Doc. No. 29) filed by Plaintiff Michael Schlegel ("Plaintiff"). Magistrate Judge Thorson's Report and Recommendation sets forth in detail the factual and procedural background relevant to this case, and that background is incorporated by reference for purposes of addressing Plaintiff's Objection.

The Court, however, provides the following summary: Plaintiff, a federal inmate, asserts common-law tort claims against state and federal officials for the negligent or intentional loss of Plaintiff's wedding ring. Plaintiff filed this lawsuit in state court, and Defendant United States Marshal<sup>1</sup> (the "U.S. Marshal") removed it to federal court under 28 U.S.C. § 2679(d)(2). The U.S. Marshal then filed a motion to substitute the United

---

<sup>1</sup> As this Court interprets Plaintiff's submissions, Defendant United States Marshal is an individual deputy U.S. marshal whose identity was unknown to Plaintiff at the time that Plaintiff filed his complaint.

States as defendant (Doc. No. 9) and a motion for an extension of time for the United States to respond to Plaintiff's complaint (Doc. No. 13). Plaintiff subsequently moved to remand the case to state court (Doc. No. 19) and moved to deny the U.S. Marshal's motion for an extension of time (Doc. No. 26).

Considering these motions, Magistrate Judge Thorson recommended that the Court: (1) grant the U.S. Marshal's motion to substitute; (2) grant the U.S. Marshal's motion for an extension of time; (3) deny Plaintiff's motion to remand; (4) deny Plaintiff's motion to deny the U.S. Marshal's request for an extension of time; and (5) grant Plaintiff's request to file an amended complaint, a request articulated in one of Plaintiff's briefs. In his Objection, Plaintiff challenges only Magistrate Judge Thorson's recommendation that the Court grant the motion to substitute. He asserts two arguments, which the Court, having conducted a *de novo* review of the record, addresses in turn below.

First, Plaintiff asserts that the U.S. Marshal "had a duty of office to see that plaintiff's property was safely kept" and therefore "would not be entitled to immunity" under the Westfall Act. (Doc. No. 30 at 2.) The Court disagrees. As explained by Magistrate Judge Thorson, the Westfall Act provides that the *exclusive* remedy for a common-law tort claim against a federal official acting within the scope of his employment is an action against the United States under the Federal Tort Claims Act. 28 U.S.C. § 2679(b)(1); *Osborn v. Haley*, 549 U.S. 225, 229-30 (2007). Whether a federal official—such as a deputy U.S. marshal—has a "duty of office" is therefore irrelevant.

Second, Plaintiff contends that he should have been permitted to amend his complaint to specifically name the individual state and federal defendants before Magistrate Judge Thorson issued her Report and Recommendation regarding the U.S. Marshal's motion to substitute. Again, the Court disagrees. Under the Westfall Act, the United States is the proper defendant, regardless of whether the complaint specifically identifies the deputy U.S. marshal who allegedly engaged in the conduct at issue. Thus, Magistrate Judge Thorson correctly concluded that the United States should be substituted for the U.S. Marshal.

### **ORDER**

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, **IT IS HEREBY ORDERED** that:

1. Plaintiff Michael Schlegel's Objection (Doc. No. [30]) to Magistrate Judge Becky R. Thorson's July 25, 2016 Report and Recommendation is **OVERRULED**.
2. Magistrate Judge Becky R. Thorson's July 25, 2016 Report and Recommendation (Doc. No. [29]) is **ADOPTED**.
3. Defendant United States Marshal's Motion to Substitute the United States of America for Defendant United States Marshal and to Dismiss Defendant United States Marshal with Prejudice (Doc. No. [9]) is **GRANTED**. The United States is substituted for Defendant United States Marshal, and Defendant United States Marshal is **DISMISSED WITH PREJUDICE** from this lawsuit.

4. Defendant United States Marshal's Motion for Extension of Time (Doc. No. [13]) is **GRANTED**. The United States shall have **twenty-one** days from the date of this Order or the filing of an amended complaint, whichever is later, to respond.

4. Plaintiff Michael Schlegel's Motion to Remand Back to the State District Court (Doc. No. [19]) is **DENIED**.

5. Plaintiff Michael Schlegel's Motion to Deny the Defendant United States Marshal the Extension and Renewed Motion to Remand to Sherburne County (Doc. No. [26]) is **DENIED**.

5. Plaintiff Michael Schlegel's request for leave to amend his complaint is **GRANTED**. Plaintiff shall have **fourteen days** from the date of this Order to file an amended complaint.

Dated: September 19, 2016

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge